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SENATE

REPORT
No. 1697

EDWARD C. TONSMEIRE, JR.

JUNE 24, 1960.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 3169]

The Committee on the Judiciary, to which was referred the bill (S. 3169) for the relief of Edward C. Tonsmeire, Jr., having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve Edward C. Tonsmeire, Jr., of Biloxi, Miss., of liability to the United States in the sum of \$1,382.64, paid him erroneously as basic allowance for quarters and station per diem allowance in 1951 and 1952 while he was on active duty as an officer in the U.S. Coast Guard.

STATEMENT

The serviceman, Lt. (j.g.) Edward C. Tonsmeire, Jr., was on active duty and attached to the office of the commander, 14th Coast Guard District in Honolulu, Hawaii, from June 13, 1951, to August 12, 1952. During this time, he was single and occupied bachelor officer's quarters at Fort DeRussy, an Army post at Honolulu. In this same period, he was paid \$1,382.64 as basic allowance for quarters and station per diem allowance.

The Treasury Department is opposed to the enactment of S. 3169. It is the Department's belief that the quarters occupied by Edward C. Tonsmeire, Jr., were Government quarters and therefore he was not entitled to basic allowance for quarters and station per diem allowance.

The facts and conclusions contained in the report of the Treasury Department are set forth below, as follows:

The records of this Department indicate that Lt. (jg.) Edward C. Tonsmeire, Jr. (38236) U.S. CGR, of 601 East Beach, Biloxi, Miss., was on active duty and attached to the office of the commander, 14th Coast Guard District in Honolulu, Hawaii, from June 13, 1951, to August 12, 1952. During this time, he was single and occupied bachelor officer's quarters at Fort DeRussy, an Army post at Honolulu. In this same period, he was paid \$1,382.62 as basic allowance for quarters and station per diem allowance, even though he was occupying Government quarters. A commanding officer's order authorizing the entitlement of these allowances was not challenged due to the lack of a controlling authoritative opinion at the time upon the propriety of such payments. Lieutenant Tonsmeire was paid in good faith and no fraud or collusion is evident. The two authorized certifying officers who made these erroneous payments were granted relief in their accounts by the General Accounting Office in 1956. However, other officers receiving erroneous payments of similar allowances have been required to repay the amounts so received and unless some hardship is involved, the special consideration herein afforded Lieutenant Tonsmeire would establish an undesirable precedent.

For these reasons the Treasury Department is opposed to the enactment of S. 3169.

Mr. Tonsmeire, in a communication to the office of the chairman of this committee, pointed out the fact that he had filed all the required forms, as set out in the Coast Guard regulations and the laws of the United States, giving information as to where members of the Coast Guard are living. He also pointed out that he had filed these forms at the beginning of his duty period in Honolulu and on every January 1 and July 1 thereafter during his stay there and, that by filing these forms he had notified the Coast Guard officials in charge of his pay records as to where he was living and it was their duty to determine whether or not he was entitled to the payment of quarters allowance. He stated also that he was under the belief that he was living in private quarters and was paying "rent" in the sum of \$1 per day, which he stated was a fair rental for the quarters that were occupied. To substantiate his contention that this was a rent, he sent a photostatic copy of a receipt which he received for 1 month's rent which is attached and made a part hereof.

To further prove that the quarters he occupied were private Mr. Tonsmeire included in his communication a copy of a letter written by the commander of the 14th Coast Guard District to the Commandant of the Coast Guard, said letter being written on July 28, 1952, and indicating the fact that these quarters were not considered Government quarters until July 1, 1952.

The facts contained in the letter from the commander of the 14th Coast Guard District are set forth below, as follows:

1. Prior to July 1, 1952, the commander, 14th Coast Guard District, and the Commandant, 14th Naval District have, lacking any written instructions, considered the officer and

enlisted men hotels at the Fort DeRussy Recreation Center temporary private quarters and not in accordance with the meaning of article 1150(5) JTR. Since July 1, 1952, it has been brought to the attention of the above that the Headquarters, U.S. Army, Pacific, considers these quarters "Government quarters" within the meaning of article 1150(5) JTR. Heretofore no BAQ checkage has been made against a member's pay record while occupying quarters at FDRC. Members who were previously assigned permanent duty in the Honolulu area and who occupied temporary quarters at Fort DeRussy Recreation Center were paid in accordance with article 4303(2) JTR, these quarters not being considered Government quarters. An officer permanently attached to the 14th Coast Guard District office, has occupied and paid for a nonhousekeeping room, in the BOQ, for about 1 year. The ACO has not been notified to make any checkage against the BAQ in that the officer was not assigned to the room by the Coast Guard and the CCG 14 has not been informed by the officer in charge, Fort DeRussy Recreation Center, that the quarters were Government quarters. The officer further claimed the housing was temporary in the meaning of article 4303(2) JTR and upon approval of the commanding officer, 14th Coast Guard District, the officer was credited with a total of \$405 (\$9 a day for 45 days), on his pay record.

2. Headquarters attention is invited to reference (b) paragraph 2(c). According to articles 207(1) and 223(12), P. & S.I., it is necessary for the member to be assigned quarters and also for the commanding officer to notify the ACO in order to insure that no credit of basic allowance for quarters (S), or basic allowance for quarters for dependents, is made. No reference has ever been made by the Headquarters U.S. Army, Pacific, as to whether or not a member of the Coast Guard has contacted his commanding officer, 14th Coast Guard District. Therefore, in the past, the ACO has had no information with which to check the members BAQ.

3. Headquarters attention is invited to reference (b) paragraph 2(b)(2). According to article 1150(5) JTR, enlisted personnel shall not be subject to a service charge when occupying Government quarters. In addition to the charges shown in reference (b) paragraph 2(b)(1) there is also a charge of \$1.50 per room in the BOQ.

4. The quarters at Fort DeRussy Recreation Center are considered nonhousekeeping and barrack type. Each room of the married quarters and the BOQ are approximately 10 feet by 10 feet. The rooms in the married quarters have two iron beds, a small chest of drawers, and a chair. The BOQ rooms have one bed, a small chest of drawers, a chair, table, and lamp. There are no clothes closets, just a bar, and no mirror. The lavatory facilities consist of community toilets and baths. There are also approximately 10 apartments consisting of 1 or 2 bedrooms and sitting room, with bath, no messing facilities available. The meals are not included but are furnished by a civilian mess.

5. In view of the above it is requested that headquarters render a decision as to whether or not the officer and enlisted men hotel accommodations at Fort DeRussy Recreation Center are, in fact, Government quarters for the purpose of checking BAQ(S), BAQD, and a station PD allowance (article 4303(2) JTR).

6. If headquarters decision to paragraph 5 is in the affirmative information is requested as to how far back the ACO should go in order to make the necessary BAQ(S) and BAQD checkages. In a telephone conversation the officer in charge of Fort DeRussy Recreation Center stated that it is almost impossible to make an accurate account of the past records in that it is not the policy to save the old registers.

7. Headquarters attention is further invited to the fact that the quarters are considered temporary quarters and therefore it is not believed by this office that any checkage should be made against BAQ(S) and BAQD inasmuch as articles 207(1) and 223(12) P. & S. I. states that the quarters should be assigned by the commanding officer.

Mr. Tonsmeire's position is best stated in a letter by him, dated March 31, 1954, to Mr. O. W. Ayres, Chief, Pay and Voucher Section of the 14th Coast Guard District. This letter was in response to a request for payment to the Treasurer of the United States of the \$1,382.64. It states in part as follows:

I would respectfully like to call the attention of Coast Guard Headquarters to the following matters in connection with my occupancy of quarters at Fort DeRussy from June 13, 1951, to August 12, 1952:

1. At the time that I commenced occupancy of quarters at Fort DeRussy, I made inquiry among Coast Guard personnel and it was common knowledge that all Coast Guard personnel who lived at Fort DeRussy were not thereby deprived of their right to draw quarters allowance.

2. Fort DeRussy displays a sign on which are the following words, "Fort DeRussy, Officers' Hotel."

3. At required times during said occupancy I gave official notification in writing to the Coast Guard of such occupancy and up until the receipt of your letter of November 20th, 1953, no official notification was ever given to me to the effect that quarters at Fort DeRussy were considered Government quarters. It appears to me that this constitutes laches on the part of the Coast Guard and that the Coast Guard should be estopped from now taking the stand that Coast Guard personnel occupying quarters at Fort DeRussy are not entitled to draw quarters allowance.

4. I paid rent to the Fort DeRussy officers' hotel in the total sum of \$444 during the time above mentioned. Certainly it cannot be contended that such a sum as this could have been anything else but rent. Also, I have received receipts acknowledging the payment of rent. I would like to be advised if any provision has been made for the refunding of this money paid as rent.

5. The quarters at Fort DeRussy were occupied at some discomfort and inconvenience to me and had I had the slightest reason to believe that the occupancy of them would have deprived me of the right to receive quarters allowance, I would have terminated the occupancy immediately. I feel that I fulfilled my duty by making official reports of my occupancy of quarters at Fort DeRussy and that if I am required to refund the quarters allowance paid me that I will be penalized for the negligence of someone other than myself.

The committee has studied this matter in great detail, and can readily understand how Edward C. Tonsmeire, Jr., was under the impression that he was occupying private quarters, especially when his own commander was under the same impression. The committee is of the belief that, under all of the circumstances, there is equity in the position set forth by Edward C. Tonsmeire, Jr., and in order to fulfill the equitable obligation of the Government in this regard, recommends that the bill, S. 3169, be considered favorably.

Attached hereto and made a part hereof is the report submitted by the Treasury Department on the instant bill; the aforementioned letter of the commander of the 14th Coast Guard District; and also the aforementioned copy of a receipt for rent paid by Edward C. Tonsmeire, Jr., and his letter to Mr. O. W. Ayres.

OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, May 19, 1960.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

MY DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 3169, for the relief of Edward C. Tonsmeire, Jr.

The purpose of the proposed legislation is to relieve Edward C. Tonsmeire, Jr., of Biloxi, Miss., of liability to the United States in the sum of \$1,382.64 paid him erroneously as basic allowance for quarters and station per diem allowance in 1951 and 1952 while he was on active duty as an officer in the U.S. Coast Guard.

The records of this Department indicate that Lt. (jg.) Edward C. Tonsmeire, Jr. (38236), USCGR, of 601 East Beach, Biloxi, Miss., was on active duty and attached to the office of the commander, 14th Coast Guard District in Honolulu, Hawaii, from June 13, 1951, to August 12, 1952. During this time, he was single and occupied bachelor officers' quarters at Fort DeRussy, an Army post at Honolulu. In this same period, he was paid \$1,382.62 as basic allowance for quarters and station per diem allowance, even though he was occupying Government quarters. A commanding officer's order authorizing the entitlement of these allowances was not challenged due to the lack of a controlling authoritative opinion at the time upon the propriety of such payments. Lieutenant Tonsmeire was paid in good faith and no fraud or collusion is evident. The two authorized certifying officers who made these erroneous payments were granted relief in their accounts by the General Accounting Office in 1956. However, other officers receiving erroneous payments of similar allowances

have been required to repay the amounts so received and unless some hardship is involved, the special consideration herein afforded Lieutenant Tonsmeire would establish an undesirable precedent.

For these reasons the Treasury Department is opposed to the enactment of S. 3169.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

A. GILMORE FLUES,
Acting Secretary of the Treasury.

JULY 28, 1952.

L20; Serial 9578

From: Commander, 14th Coast Guard District.

To: Commandant (F).

Subject: Quarters; Fort DeRussy Recreation Center; designation as to status of.

Reference: (a) Commander, 14th Coast Guard District, letter, July 23, 1952, L16-5, serial 9570.

(b) Headquarters, U.S. Army, Pacific (G-1), letter, July 24, 1952, GPOPR 120.

(c) Article 1150 (5) JTR.

(d) Article 4303 (2) JTR.

(e) Article 207 (1) and (2), P. & S.I.

(f) Article 223 (12) P. & S.I.

1. Prior to July 1, 1952, the commander, 14th Coast Guard District and the commandant, 14th Naval District have, lacking any written instructions, considered the officer and enlisted men hotels at the Fort DeRussy Recreation Center temporary private quarters and not in accordance with the meaning of article 1150(5) JTR. Since July 1, 1952, it has been brought to the attention of the above that the Headquarters, U.S. Army, Pacific, considers these quarters "Government quarters" within the meaning of article 1150(5) JTR. Heretofore no BAQ checkage has been made against a member's pay record while occupying quarters at Fort DeRussy Recreation Center. Members who were previously assigned permanent duty in the Honolulu area and who occupied temporary quarters at Fort DeRussy Recreation Center were paid in accordance with article 4303(2) JTR, these quarters not being considered Government quarters. An officer permanently attached to the 14th Coast Guard District office, has occupied and paid for a nonhousekeeping room, in the BOQ for about 1 year. The ACO has not been notified to make any checkage against the BAQ in that the officer was not assigned to the room by the Coast Guard and the CCG 14 has not been informed by the officer in charge, Fort DeRussy Recreation Center, that the quarters were Government quarters. The officer further claimed the housing was temporary in the meaning of article 4303(2) JTR and upon approval of the commanding officer, 14th Coast Guard District, the officer was credited with a total of \$405 (\$9 a day for 45 days) on his pay record.

2. Headquarters attention is invited to reference (b) paragraph 2(c) According to articles 207(1) and 223(12), P. & S.I., it is necessary for the member to be assigned quarters and also for the commanding officer to notify the ACO in order to insure that no credit of basic allowance for quarters (S), or basic allowance for quarters for dependents, is made. No reference has ever been made by the Headquarters U.S. Army, Pacific, as to whether or not a member of the Coast-Guard has contacted his commanding officer, 14th Coast Guard District. Therefore, in the past, the ACO has had no information with which to check the members BAQ.

3. Headquarters attention is invited to reference (b) paragraph 2(b)(2). According to article 1150(5) JTR, enlisted personnel shall not be subject to a service charge when occupying Government, quarters. In addition to the charges shown in reference (b) paragraph 2(b)(1) there is also a charge of \$1.50 per room in the BOQ.

4. The quarters at Fort DeRussy Recreation Center are considered nonhousekeeping and barrack type. Each room of the married quarters and the BOQ are approximately 10 feet by 10 feet. The rooms in the married quarters have two iron beds, a small chest of drawers, and a chair. The BOQ rooms have one bed, a small chest of drawers, a chair, table, and lamp. There are no clothes closets, just a bar, and no mirror. The lavatory facilities consists of community toilets and baths. There are also approximately 10 apartments consisting of one or two bedrooms and sitting room, with, bath, no messing facilities available. The meals are not included but are furnished by a civilian mess.

5. In view of the above it is requested that headquarters render a decision as to whether or not the officer and enlisted men hotel accommodations at Fort DeRussy Recreation Center are, in fact, Government quarters for the purpose of checking BAQ(S), BAQD and a station PD allowance (art. 4303(2) JTR).

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By direction:

J. A. B. HAY.

No. 578

7 JULY 1952.

Received from Lt. E. C. Tonsmeire thirty dollars.

For Rent for June 1952. No. 48.

(Register No.) 6410.

L. C. MARSHALL, *Clerk.*
(CP)

MARCH 31, 1954.

Mr. O. W. AYRES,
Chief, Pay and Voucher Section,
14th Coast Guard District,
Honolulu, T.H.

DEAR SIR: Reference is made to your letters of November 20, 1953, and March 10, 1954, regarding a request for payment to the Treasurer of the United States of \$1,382.64.

I would respectfully like to call the attention of Coast Guard Headquarters to the following matters in connection with my occupancy of quarters at Fort DeRussy from June 13, 1951, to August 12, 1952:

1. At the time that I commenced occupancy of quarters at Fort DeRussy, I made inquiry among Coast Guard personnel and it was common knowledge that all Coast Guard personnel who lived at Fort DeRussy were not thereby deprived of their right to draw quarters allowance.

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It will be appreciated by me if you will forward this letter to headquarters and advise me of the reply received.

Very truly yours,

E. C. TONSMEIRE, Jr.

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